

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| THEODORE RIDGEWAY, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 20-200E |
| |) | Magistrate Judge Maureen P. Kelly |
| v. |) | |
| |) | |
| JERI SMOCK, CHCA, MIKE EDWARDS, |) | Re: ECF No. 43 |
| RNS, DR. LETIZIO, DANIEL STROUP, <i>PA</i> , |) | |
| DR. HARTWELL, CAPT. CAMPBELL, |) | |
| SGT. BELL, <i>CO II</i> , SGT. PUTMAN, <i>CO II</i> , |) | |
| CO1 BUZZIO, CO1 BROMLEY, CO1 |) | |
| POWELL, CO1 HALL, NURSE BLAIR, |) | |
| SUPERINTENDENT CLARK, JOHN E. |) | |
| WETZEL, <i>Secretary of Corrections</i> , |) | |
| MEDICAL DEPARTMENT OF SCI |) | |
| ALBION, BOTH SHIFT COMMANDERS, |) | |
| and MS. WEBB, <i>Unit Manager</i> , |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM ORDER

Plaintiff Theodore Ridgeway (“Plaintiff”), an inmate presently incarcerated at State Correctional Institution at Albion (“SCI-Albion”) filed this *pro se* action pursuant to 42 U.S.C. § 1983, arising out of allegations that Plaintiff was injured after prison officials failed to assign him bottom tier/bottom bunk status while he required the use of crutches. ECF No. 3. Presently before the Court is a Motion for Leave to File an Amended Complaint (“Motion to Amend”). ECF No. 43. For the reasons that follow, the Motion is denied.

Plaintiff originally lodged his Complaint in this action on July 16, 2020, without submitting a filing fee or Motion for Leave to Proceed *in forma pauperis* (“IFP Motion”). ECF No. 1. After the Court issued a Deficiency Order, Plaintiff filed an IFP Motion. ECF Nos. 2 and 3. The Court

granted Plaintiff's IFP Motion on September 15, 2020, and his Complaint was filed the same day. ECF Nos. 4 and 6.

Defendants Dr. Letizio and Daniel Stroup filed an Answer to Plaintiff's Complaint on December 23, 2020. All other Defendants moved to dismiss Plaintiff's Complaint, ECF Nos. 16 and 31, and those dispositive motions are currently pending before the Court.¹

Plaintiff filed the instant Motion to Amend on February 24, 2021. ECF No. 43. In his Motion, Plaintiff requests leave to amend his Complaint to include "more or different facts, and new witnesses." Id. at 1. Plaintiff states that he learned of an additional witness, and he requests leave to amend his Complaint to add this individual to his "witness list." Id. at 7-8. He also requests that all witnesses he has identified, as well as Defendants, be called to testify at a jury trial of this matter. Id. at 8.

In addition, Plaintiff refers to alleged retaliation, and he attaches various exhibits that he purports to show evidence of retaliation. Id. at 3-6. It is not clear, however, whether and to what extent Plaintiff seeks to incorporate allegations relative to retaliation in his Complaint. Beyond his request to add a witness, he does not specifically include a request to amend regarding his retaliation claim, and there is no proposed amended Complaint for the Court's consideration. See id. at 7-8.

Upon review, the Motion is denied. With respect to Plaintiff's request regarding witnesses, it is not necessary for Plaintiff to include or update a witness list in his Complaint, and it is premature to determine which witnesses may be called at a trial of this matter. To the extent Plaintiff seeks to incorporate any allegations or claims regarding retaliation, he does not

¹ Defendants filed the Motions to Dismiss on November 17, 2020 and December 23, 2020. ECF Nos. 16 and 31. Because it has been more than 21 days since Defendants moved to dismiss Plaintiff's Complaint, Plaintiff cannot file an amended Complaint as of right. See Fed. R. Civ. P. 15(a).

specifically request this relief in his Motion, and he fails to include a proposed amended Complaint for the Court's consideration. For these reasons, the Motion to Amend is denied. To the extent that Plaintiff seeks add a retaliation claim, the denial is without prejudice to Plaintiff to file a motion for leave to file amended complaint with the proposed amended complaint attached. An appropriate Order follows.

ORDER

AND NOW, this 3rd day of March, 2021, it is HEREBY ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 43, is DENIED. To the extent Plaintiff seeks to add a retaliation claim, this denial is without prejudice to Plaintiff to file a motion for leave to file an amended complaint with the proposed amended complaint attached.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights

BY THE COURT:

/s/ **Maureen P. Kelly**

MAUREEN P. KELLY

UNITED STATES MAGISTRATE JUDGE

cc: Theodore Ridgeway
FS-3189
SCI-Albion
10745 Route 18
Albion, PA 16475-0001

All counsel of record via electronic filing.